respect of intelligent laymen and candid lawyers. If such opinions were promptly criticized by disinterested persons, writes Mr. E. J. McDermott, a prominent member of the Louisville bar, in a recent number of *The Docket*, they would be rendered with less frequency. Hon. Bourke Cockran, in an address before the Ohio State Bar Association, July 8, 1908, dwelt upon the increasing lack of popular esteem in which many of our courts are beginning to be held because of such decisions as those cited above. He said:

"The courts which since the establishment of our government have been objects of universal respect and admiration have become within the last few weeks objects of discussion and even criticism. These criticisms are no longer confined to the reckless, the obscure, the degraded, or the rejected of the people. They have been voiced by many men in high positions, including among their number an official no less exalted than the President of the United States."

"Assuming, as I do," continued Mr. Cockran, "that no one desires or could contemplate with patience a proposal to abolish or abandon our government as it exists, it follows that the most pressing necessity of our security is restoration of the courts to the respect and confidence they enjoyed during the last century. How is this to be accomplished? Manifestly, the way by which universal respect amounting to reverence was originally acquired, is the surest if not the only way by which it can be regained. * * *"

J. W. G.

Reform in the Methods of Selecting Juries.

The long delay involved in the selection of the jury in the second trial of Lee O'Neil Brown in Chicago recently,—some three weeks were consumed, in the course of which 800 veniremen were summoned by the court,—serves to call public attention again to the crying need for more expeditious methods of selecting juries in important cases. We have on another occasion referred to the Gilhooley and Shea cases, in the former of which nine-and-a-half weeks were required to complete the panel, and in the latter, thirteen-and-a-half weeks. In the Gilhooley case 4,150 veniremen were summoned, nearly 4,000,000 words being used in conducting the examination of them. The cost in fees to veniremen and jurors amounted to more than $4,000, and their hotel expenses aggregated $2,000 more. In the first trial of Shea 9,425 veniremen were summoned, of whom 4,821 were actually examined, the cost in jury fees alone amounting to more than $13,000. In San Francisco recently 91 days were con-

sumed in the selection of a jury to try Patrick Calhoun on the charge of bribery, and in the Cooper case in Tennessee several weeks were similarly consumed.

Of course these are exceptional cases but the fact that such delays are possible under the present system and that they are occurring with increasing frequency is evidence that something is wrong with existing methods and that thorough-going reform is greatly needed. Aside from the waste of time and expense, such delays tend to increase the aversion to jury duty on the part of professional and business men, thus rendering the task of selection more difficult. It is not to be wondered at that a man who is confronted with the prospect of being kept away from his home and business in a virtual state of imprisonment for weeks, and possibly months, before the trial is really started should, when asked if he knows any reason why he cannot render an impartial verdict, resolve the doubt in favor of his own comfort and liberty by professing a prejudice which really does not exist in his mind.

The chief cause of such delays is the American practice which assumes that one who may have hastily formed an opinion concerning the guilt or innocence of the accused from hearsay evidence or from newspaper report is incapable of rendering an impartial verdict on the basis of the evidence brought out in the course of the trial. Such a requirement practically disqualifies men of intelligence who read the newspapers and who almost unconsciously form opinions upon the merits of the case, especially when it is one which attracts widespread attention in the community. It is, moreover, inconsistent with one of the fundamental principles underlying the jury system, namely, the ability of jurors to decide controverted facts on the basis of the evidence presented in court. It is submitted that any juror who is capable of doing this intelligently is capable of altering a preconceived opinion when the evidence produced in court points to a different conclusion from that which he may have reached on the basis of hearsay evidence or newspaper report. The fact, therefore, that a juror has formed an opinion from reading newspaper accounts of the crime should not *prima facie* be a cause for challenge.

In our judgment it ought to be sufficient to ask a venireman two questions only in order to determine his fitness for jury service: first, whether he is in any way related to the accused or his victim; and second, whether he knows of any reason why he cannot render a verdict in accordance with the evidence presented to the court. The irrelevant, long-drawn-out interrogatories often resorted to by coun-

sel are unnecessary and ought not to be permitted. In the Gilhooley case referred to above, one juror was interrogated for an hour-and-three-quarters in regard to his past life, his domestic, business and social relationships and many other matters which were immaterial. Another juror was asked seventy-three questions by counsel for defense and almost as many by the prosecuting attorney. In the Iroquois theater fire case, jurors were asked whether they were opposed to dancing, whether they were fond of music, whether they believed in theater-going, whether they had any prejudices against city people, whether any of their families were ever hurt in a fire, what newspapers they were accustomed to read, and many other questions of a similar character.

According to the English practice, the requirement of due process of law in the selection of jurors is fully satisfied by the two inquiries mentioned above and the protracted rambling interrogatories which have come to be a regular feature of nearly every important trial in this country are not permitted. To an Englishman it seems superfluous and a waste of time to ask a juror anything more than whether he is related to either of the parties, and if not, whether he can return a verdict in accordance with the law and the evidence. The result is that rarely more than an hour is ever consumed by an English court in completing a panel in the most difficult case. R. Newton Crane, formerly a member of the American bar, but for some years past a prominent barrister of London, in a letter to Hon. Joseph H. Choate, dated March 1, 1903, speaking of the English procedure of empanelling juries, said: "The examination of jurors on their *voir dire* is absolutely unknown in England, while many lawyers who have been in practice for twenty years or more have never known a juror to be objected to or excused for cause. It not infrequently happens that the same twelve jurymen will hear three cases without leaving the box." (See report of the New York Commission on the Law's Delay, p. 111.) The truth of this statement has recently been confirmed by Dean Lawson of Missouri. who spent four months in England during the past summer studying English procedure. In an address before the American Institute of Criminal Law and Criminology at its recent meeting in Washington, Mr. Lawson declared that it requires no longer to select a jury in England than is necessary to call their names, and that the challenge of a juror is as rare as the challenge of a judge in the United States. He says he never saw a juror challenged during the four months he spent in the English courts, and he was

informed by one of the judges that only one instance of a challenge had come under his observation during a period of fourteen years. Mr. Lawson says the same jury will frequently hear three cases before leaving the box, one such case having come under his observation while attending a court in Manchester.

It is not allowable to ask a prospective juror whether he has formed an opinion or has expressed one, for it is not assumed that one who has expressed an opinion on the facts as heard from others, or read in the newspapers, is thereby biased. The burden of proof to show the existence of prejudice is on him who challenges a juror, and evidence of bias must be produced to support a challenge.

Neither counsel for the Crown nor the defense is permitted, says Mr. Lawson, to go on a fishing expedition in the course of the examination in the hope of finding some possible ground for a challenge.

"Think of taking a month or six weeks to select a jury," says Justice Henry B. Brown (retired) of the United States Supreme Court, "and requiring each prospective juror to give a history of his life and his opinion upon every conceivable subject for the apparent purpose of laying the ground, not for a challenge for cause, but for a peremptory challenge. When I was a Judge in the court of original jurisdiction," says Justice Brown, "in all the fifteen years time I do not think I spent more than two or three hours in impanelling a jury."

Hon. Frank B. Kellog, special assistant to the Attorney General of the United States, in discussing the "delays of the law" has this to say of our methods of choosing juries:

"The trouble is that in the selection of juries we have come to impose such technical rules as to opinions obtained from hearsay or from press reports that it is almost impossible in the trial of a case of great public interest to obtain a high-minded and intelligent jury. I do not minimize the importance of obtaining an impartial jury, It is, of course, necessary in all trials; but the energies of legislators, lawyers, and judges have for so many years been exercised in throwing safeguards around their selection that these safeguards have become obstacles in the accomplishment of the real purpose.

"I believe that the court should restrict the prolonged and technical examination of jurors, interposing its authority to see that only a reasonable examination takes place, and that the court itself should very largely conduct the examination. I do not say that in all cases the lawyers should be prohibited from examining jurors.

They should be permitted to examine when that may tend to elicit information which would show the disqualification of a juror. But the license which has been exercised by the bar should be prevented and the right largely restricted. In many cases the judge himself is best qualified to perform the duty, though, to be sure, he can be largely aided by counsel by reason of their knowledge of the case."

In our judgment the selection of juries could be materially expedited without impairing the value of the jury system by abolishing the rule which practically disqualifies a juror who has formed or casually expressed an opinion on the question at issue, unless the opinion is founded on manifest prejudice or is so strongly fixed that there is no reason to believe that it could be changed by the evidence; by confining the examination to simple inquiries as to whether the juror is related to either of the parties and whether he knows of any reason why he cannot return a verdict in accordance with the evidence introduced and admitted; by making the decision of the trial judge final upon objections asked of prospective jurors by either the counsel for the defense or the prosecuting attorney; by materially reducing the number of peremptory challenges now usually allowed; by providing more adequate and homelike accommodations for the physical comfort of jurors, thereby lessening the tendency to shirk jury duty by men who are accustomed to the comforts of home life; and by removing some of the petty and unreasonable restrictions on their liberty, particularly those which are inconsistent with the idea that jury service is a dignified and honorable public duty. The selection of a better class of men would also be facilitated by the abolition of the wholesale exemptions now allowed to many professional classes, the result of which is to eliminate a large proportion of the best qualified citizens and to restrict jury duty, to a large extent, to less fit classes. J. W. G.